

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.79 of 1985

in

SPECIAL CIVIL APPLICATION No.3471 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

1 to 5 : NO

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UNION OF INDIA THRO'DIRECTOR GENERAL OF POST

Versus

S A JOSHI

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Appearance:

MR JAYANT PATEL for Appellants

RULE SERVED for Respondent No. 1, 2, 3, 4, 5

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 17/12/98

ORAL JUDGEMENT : (Per C.K. Buch, J.

The original respondents have preferred this appeal against the order passed by the learned Single Judge dated 19.11.1984, by which the learned Single Judge has allowed the above said Special Civil Application. The dispute before the learned Single Judge, if we put in

nutshell, was that the petitioners were serving with the Posts & Telegraphs Department ("P & T Deptt." for brevity) of respondent no.1 - Union of India. They were transferred on promotion to other Postal Divisions on certain conditions. It was clarified that though they are promoted to higher posts in other divisions they will not be entitled to get themselves retransferred to their parent division. But thereafter the P & T Department liberalised the policy and permitted the employees to get repatriated to their parent division. Before the learned Single Judge, the respondents/ original petitioners have prayed for certain reliefs which we may require to reproduce in order to appreciate the entire say of the respondents/ original petitioners :

- "(i) issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction declaring that the petitioners are entitled to their transfer back to Ahmedabad City Division on completion of 5 years of service in Baroda Division on true and correct interpretation of rule 38 and the circulars issued by the Director General from time to time and further direct the respondents authorities to treat the petitioners in Ahmedabad City Division from the date of completion of five years service in Baroda Division;
- (ii) issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents authorities to supply the details about the applications made under rule 38 of the Posts and Telegraphs Manual Vol.IV for the year 1980, 1981 and 1982 and the number of vacancies and the number of seats allocated for departmental candidates and the number of seats which were used by the departmental candidates and the number of seats which were unused by them;
- (iii) pending admission, hearing and final disposal of this petition, restrain the respondents authorities from making appointment of any departmental candidate except after making the transfers of the petitioners to Ahmedabad City Division;
- (iv) pending admission, hearing and final disposal of this petition, direct the respondents authorities to transfer the petitioners at once on the vacancies which are lying vacant for the

years 1980, 1981 and 1982 in accordance with rules;

(v) . . .  
(vi) . . . "

2. The case of the respondents/ original petitioners is mainly based on the interpretation of Rule 38 of the Post & Telegraph Manual Vol.IV for the years 1980, 1981 and 1982. According to them, the Department has committed an apparent error and has acted unfairly by recruiting the candidates directly and ignoring the accepted ratio of 50 : 50, i.e. 50 % by promotion from the departmental candidates and 50 % by recruitment by open competition. It was submitted that as the department has failed in maintaining this ratio, the scope of the returning to the parent division, i.e. repatriation, as per the liberalised policy, has been adversely affected. On going through the judgment we find that the learned Single Judge has issued more than one direction and has carved out an independent policy or a scheme, which may be parallel or contrary to the policy of the concerned Department. The vital question before us is as to whether while exercising jurisdiction under Article 226 of the Constitution of India, the learned Single Judge could have issued directions carving out an independent policy or modifying the policy of the Department without observing that any such policy or conditions is contrary to the guarantees conferred by the Constitution. Every administrative decision is not to be interfered at the time of dealing with such application, that is the accepted legal proposition.

3. The facts brought before the learned Single Judge was touching several issues including recruitment, promotion, promotion from the local candidates, viz-a-viz the persons who are brought by transfer under liberalised scheme of repatriation, etc. As we have referred earlier about the scope or jurisdiction of this Court under Article 226 of the Constitution of India, we would like to refer to certain observations and directions given by the learned Single Judge at the time of deciding this Special Civil Application by the impugned order :

" . . . Mr.S.D. Shah, the learned counsel for the respondent states that the posts allocated to the departmental candidates which remained unfilled in any particular year on account of non availability of the candidates, they were carried over to the

subsequent years and hence there must be at present an accumulated number of carried over posts which were meant for the departmental candidates should be available for allocation.

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"It appears that it would be proper that there should be a fixed quota allotted for the petitioners who seek repatriation to their original posts. When the department has adopted a liberalised policy to bring back its employees who have gone out on promotion and have served outside for five years and more, it would also be proper that the liberalised scheme works in a fair and ascertainable manner rather than leaving it to be implemented in a haphazard or uncertain manner. Mr.Tanna has suggested that out of the total number of promotional posts available to the departmental candidates, 10 % may be set apart for the persons who seek repatriation under the liberalised scheme. Mr.Shah however, points out that allocating 10% of the promotional posts to repatriators, may do injustice to the persons who are eligible for promotion locally. He suggested that 5% of the promotional posts would be sufficient to accommodate the petitioners and similar other applications who seek repatriation.

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Hence, it appears fair and just that the Posts and Telegraphs Department should be directed to set apart between 5% and 10% of the total number of vacancies available for the departmental candidates who have gone out of their places with a view to take promotion from Postmen to Clerks.

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This ratio of 5% to 10% to be allocated to those who seek repatriation will be operated depending on the number of applications in any division at a given time. This would give the persons who seek repatriation after having served for five years at a place where they have gone to obtain promotion certainly that within a reasonable time they will have an opportunity to come back to their original places under the liberalised

scheme.

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Hence, the guidelines laid down by the Posts and Telegraphs Department have to be followed and not to be ignored arbitrarily and therefore, the directions given above are to be understood in this sense that while the department has a discretion, it would follow the rules and guidelines in such a way that there would not be any arbitrary, unfair or unjust denial of benefit to its employees. The above directions with regard to giving 5% to 10% posts to the petitioners and other applicants seeking repatriation, the same would be operative with effect from 1981 because in the year 1981 and 1982, there were vacancies available to the departmental candidates, out of which the petitioners and other applicants seeking repatriation could have been given accommodation."

4. One of the important issues which was required to be considered by the learned Single Judge was entitlement to the promotion of a candidate to higher posts of the candidates who are departmental promotees and working locally in a division where outside candidate has sought for transfer under the liberalised policy. It is pointed out by the learned counsel appearing for the appellants that certain submissions of the learned counsel appearing for the Union of India are treated as declarations made by the appellant/ Union of India or assent or consent given by the learned counsel. This aspect has been clarified in the memo of appeal. We are satisfied that the learned Single Judge has erred in laying altogether a different scheme for the persons who have opted to go out of their respective division on promotion and with certain conditions. Even if we agree that the department had erred in not maintaining the ratio of 50 : 50 at the time of recruitment of certain posts or promotional posts, even then the same would not strengthen the case of the petitioner, because the nature of dispute agitated by the petitioner stands altogether on a different footing. The learned Single Judge at the time of issuing directions or making observations in the nature of recommendations has not considered the ultimate long term effect. And therefore, only the appellants have agitated all the relevant issues before this Bench. Without commenting upon the nature of the directions which are

reflected in the above referred para, we are of the view that the learned Single Judge has exceeded the jurisdiction vested with the court under Article 226 of the Constitution in carving out a new policy and by creating special berths for the persons who have left their respective divisions at the time of availing promotion when they were offered such promotions.

5. Some of the persons are repatriated to their original Some of the persons are repatriated to their original division under the liberalised policy. But this Court cannot agree with the scheme as carved out by the learned Single Judge directing to lay a policy to repatriate certain percentage of staff, namely 5% to 10% of such employees at the time of filling in promotional post, because the same would adversely affect the persons working in that very division, who might be otherwise entitled to promotional posts. Therefore, if the order of the learned Single Judge is confirmed, then it may work prejudicial to such persons. Had the learned Single Judge observed that in the event of non availability of the local candidates for the promotional post the person who wishes repatriation should be accommodated, then we would not have interfered with such recommendations or directions. In nutshell only on this ground the Appeal requires to be allowed and the Special Civil Application requires to be dismissed.

6. We agree with the respondents/ petitioners before the learned Single Judge that they are Class III employees, most of them are Postmen. Many of them might have gained advantage of the order of the learned Single Judge as the order of the learned Single Judge was not stayed by this court. Therefore, even if this appeal is allowed, the persons who have gained any advantage or favour should not be put to disadvantage after lapse of more than 12 years. Learned counsel appearing for the appellant/ Union of India has fairly conceded that he has no objection if it is observed that the persons, who are put to advantage of the order passed by the learned Single Judge should not be treated adversely.

7. With these observations, we allow this Letters Patent Appeal and dismiss Special Civil application No.3471 of 1982. Notice is discharged. No costs.

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